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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Tax Division

APR 15 1985

FILED

SQUARE 254 LIMITED PARTNERSHIP, et al. :	:	
	:	
Petitioners, :	:	
	:	Tax Docket No.
v. :	:	
	:	3313-83
DISTRICT OF COLUMBIA, :	:	
	:	
Respondent. :	:	

O R D E R

This matter came before the Court for hearing on April 8, 1985, on the parties' Cross Motions for Summary Judgment.^{1/} Petitioners appeal additional real estate taxes which respondent levied against its property for the second-half of Tax Year 1983 in the amount of \$161,107.02. Petitioners paid this amount and now seek a full refund, together with statutory interest.

This Court has jurisdiction to hear this appeal pursuant to D.C. Code §§11-1201 and 47-3305 (1981 ed.).

I. FINDINGS OF FACT

The material facts of this case are not in dispute and may be briefly summarized:

1. Petitioner Square 254 Limited Partnership, Quadrangle Development Corporation, Managing General Partner ("Square 254"), is a limited partnership organized and existing under the laws of the District of Columbia and has a principal place of business at 2030 H Street, N.W., in the District of Columbia.
2. Petitioner Square 254 is the lessee of real estate in the District of Columbia known as Lot 832 in Square 254 (the subject property) improved by premises known as 1331

^{1/} Despite petitioner's argument that respondent's motion did not address the facts and issues raised by petitioner's motion and therefore respondent cannot be deemed to have answered, the Court determines that it will treat respondent's answer as a responsive cross motion for summary judgment.

(also known as 1325) Pennsylvania Avenue, N.W., and the owner of the improvements thereon (except the National Theatre which is leased), and by the terms of the land lease agreement is obligated to pay all real estate taxes assessed against the subject property and is authorized to contest the assessment of such taxes.

3. Petitioner Pennsylvania Avenue Development Corporation ("PADC") has offices at 425 13th Street, N.W., in the District of Columbia. PADC is the owner of record of the subject property and under the terms of the land lease agreement joined in the Petition filed October 14, 1983, as a named petitioner.

4. Respondent District of Columbia sent petitioner Square 254 a notice of assessment dated February 22, 1983, for the second-half of Tax Year 1983 allegedly under the authority of D.C. Code §47-030 (1981 ed.). The notice indicated an increase in the assessment of the building on Lot 832 in Square 254 from \$219,037.00 to \$15,247,257.00 as a result of "new structures erected or roofed during the time period of July 1 through December 31, 1982."

5. Petitioners appealed their assessment to the Board of Equalization and Review which sustained the assessment.

6. Petitioners paid the resulting additional real estate taxes in the amount of \$161,107.02 and took this appeal.

II. ANALYSIS

Petitioners contend that the subject improvements were constructed as an "addition" to an existing building, 1301 Pennsylvania Avenue, N.W., and accordingly, since D.C. Code §47-030 (1981 ed.), which respondent relied upon for its taxing authority, does not authorize assessment for additions

for the second half of the tax year, the assessment appealed from is an invalid second-half assessment. Respondent argues contrariwise that the subject construction constitutes "new buildings" which requires taxation pursuant to D.C. Code §47-830 (1981 ed.). Thus the issue presented to this Court is whether the improvements on Lot 832 in Square 254 constitute an "addition" for which §47-830 (1981 ed.) does not authorize taxation, or "new buildings" for which the same statutory provision does require taxation. Upon consideration of the arguments of counsel, the record herein, and an examination of the relevant statutes, the Court concludes that respondent improperly taxed petitioners' improvements as "new buildings."

A. Taxation of "Additions"

At the outset of this discussion, the Court notes that the definition and characterization of "additions" has previously been a source of confusion to the government and taxpayers alike. For this very reason, the D.C. legislature passed the "D.C. Revenue Act of 1983" which provided the Mayor clear authorization to make supplemental assessments of "additions" beginning with Tax Year 1984. The Court sees no reason now to reach beyond that statute, nor with what authority it could act, to allow supplemental taxation of petitioners' property for the second-half of Tax Year 1983.

From the initial stages of the development of petitioners' property, the District, through the actions of the Board of Zoning Adjustment and the Department of Licenses recognized the improvements as an "addition." The Board's approval of November 11, 1980, of petitioners' plans and the Department's issuance of a building permit on April 21, 1982, refer to petitioners' improvements as an "addition." As discussed more fully below, these "additions" are not subject to the second-half supplemental assessments pursuant to D.C. Code §47-830 (1981 ed.) upon which respondent relies.

At the time of the assessment, D.C. Code §47-830 (1901 ed.) provided:

In addition to the annual assessment of all real estate made on or prior to July 1st of each year there shall be added a list of all new buildings erected or under roof prior to January 1st of each year, in the same manner as provided by law for all annual additions; and the amounts thereof shall be added as assessment for the 2nd half of the then current year payable in the month of March. (Emphasis supplied.)

In contrast, §47-829 (1901 ed.), the statutory annual supplemental assessment authority, provided:

- (a) Generally, on or prior to July 1st of each year, the Department of Finance and Revenue shall make a list of all real estate which shall have become subject to taxation and which is not then on the tax list, and affix a value thereon, according to the rules prescribed by law for assessing real estate; shall make return of all new structures erected or under roof prior to January 1st of each year or any other new structures which shall not have theretofore been assessed, specifying the tract or lot of land on which each of such structures has been erected, and the value of such structure, and they shall add such valuation to the assessment made on such tract or lot. (Emphasis supplied.)

A reading of these provisions demonstrates the distinction in assessment authority whereby the law authorized only supplemental annual assessments of "additions."

The District has previously recognized this distinction. The identical issue was presented to the District in the administrative appeal of a second-half assessment for Tax Year 1982 for property legally identified as Square 542, Lot 80, also known as Waterside Mall. In answer to the Department of Finance and Revenue's request for his opinion on the matter, Richard L. Aguglia, Chief of the Taxation Section of the D.C. Office of the Corporation Counsel stated in an April 6, 1982, memorandum:

[There is currently* no provision which allows the supplemental assessment and taxation of major additions to existing improvements to real estate. Only under §47-810 (now §47-829, 1981 ed.), is there provision for such an assessment and taxation.

The footnote states:

*Legislation to permit such taxation is pending in the City Council.

In accordance with the taxpayer's argument in that case and Mr. Aguglia's opinion, the Board restored the annual assessment by reducing the improvements to the amount of the annual assessment. (Broadler & Reiner, Inc. and D.C. R.L.A., Appeal No. 82-2370, decided 4/14/82). However, the Board did not provide the same relief to petitioners for the subject second-half assessment for Tax Year 1983, even though legislation eliminating the distinction in assessment authority for assessment of additions did not become effective until Tax Year 1984.

Title VII of Act 5-29, "District of Columbia Revenue Act of 1983," which became effective with Tax Year 1984,^{2/} (commencing July 1, 1983) amended D.C. Code §47-830 (1981 ed.) to provide in relevant part:

Annually, between July 2nd and December 31st of each year, the Mayor shall make return of all new structures erected and roofed, and all ~~new additions to or new improvements of existing structures.~~
(Emphasis supplied.)

With respect to the portions of Act 5-29 relevant to this proceeding, the Report of the Committee on Finance and Revenue on Title VII of Bill 5-74, "District of Columbia Revenue Act of 1983," stated as follows:

Under current District law, all real property in the District is assessed each year. In addition to this regular annual assessment, the law provides for two other assessments during the year.

The first such additional assessment is to cover
(1) property which has just become subject to

^{2/} This case is for the prior year Tax Year 1983 and is therefore not covered by the statute effective the following year.

taxation and which is not on the current tax list; (2) new structures erected or roofed; (3) addition to or improvements of old structures; and (4) damaged or destroyed property. This assessment is to be done on or prior to July 1 each year and the property shall be subject to tax based on such new assessment for the entire tax year. The law includes a right to appeal the assessment to the Board of Equalization and Review and Superior Court.

* * *

The second additional assessment is used to change assessed values for the second-half of the tax year. Property subject to such a second-half tax year assessment change is new construction erected or under roof and damaged or destroyed property. The law includes a right to appeal the assessment change to the Board of Equalization and Review and Superior Court.

This title would add the following categories of property which could be subjected to a second-half assessment: (1) additions to or improvements of old structures; . . .

With these amendments, the categories of properties subject to these two types of additional assessment are the same.

Thus, the language of D.C. Code §47-030 (1901 ed.) at the time of the subject assessment did not authorize a second-half supplemental assessment of an addition. The District, as shown by Mr. Aguglia's opinion and by the subsequent amendment to provide the lacking authorization, has previously recognized the lack of authorization for this assessment.

The District does not now retreat from its recognition of the historical distinction between the second-half supplemental assessment of an "addition" and the second-half supplemental assessment of a "new building," but argues that petitioners' improvements constituted "new buildings" within the taxing scope of D.C. Code §47-030 (1901 ed.). As evidence, the District points to the enormous size of petitioners'

improvements and argues that the various improvements added to the original site are not well-integrated. However, while aware of the magnitude of these improvements, the Court disagrees with respondent. Like Waterside Mall (Square 542, Lot 88) mentioned earlier in this Order, the Court concludes petitioners' improvements are comprised of constituent parts that blend together into an integrated, harmonious development.

Moreover, the Court finds no statutory authority to allow respondent's taxation. Without any formalized standards delineating "additions" and "new buildings" and any statutory or regulatory authority for the subject taxation, respondent is left to support its position with a "common sense" approach only. The Court cannot now fill in the standards and statutory framework respondent itself was obligated to provide.

B. D.C.A.R.A. Rulemaking Requirements

The District's interpretation of the statutory term "addition" is a rule and therefore to be valid it had to be promulgated consistent with the rulemaking requirements of the District of Columbia Administrative Procedure Act (APA), D.C. Code §§1-1501, ~~et seq.~~ (1981 ed.). A "rule" is defined in the D.C. APA as the whole or any part of any agency's statement of general or particular applicability and future effect designed to implement, interpret or prescribe law or policy. D.C. Code, §1-1502(6) (1981 ed.). When faced with a similar attempt by the District, as here, to interpret statutory words, the D.C. Court of Appeals held such interpretation was rulemaking. Specifically, in District of Columbia v. Green, 310 A.2d 640, 634 (D.C. 1973) the Court held that a change of the debase-ment factor for the taxation of single-family residences was an interpretation or implementation of the words "full and true value" as set forth in D.C. Code

§47-713 (1967 ed.) and was therefore a "rule" within the meaning of the D.C. APA. Thus this Court concludes that respondent's attempt to define "addition" and to distinguish it from "new building" is an interpretation or implementation of the words as they are contained in the statute, and thereby a "rule" for purposes of the D.C. APA.

Accordingly, the Court finds respondent's promulgation of this rule did not comply with the D.C. APA notice requirements. D.C. Code §1-1506 (1981 ed.) requires that a "rulemaking" consist of publication in the D.C. Register with notice of the intended action sufficient to afford interested persons an opportunity to submit data and views unless there is an emergency or the District shows "good cause." Further, any claim of exemption from APA rulemaking requirements must be narrowly construed and reluctantly countenanced. Environmental Defense Fund, Inc. v. Gorsuch, 713 F.2d 602, 816 (D.C. Cir. 1983). In this case respondent has not demonstrated any emergency or good cause to exempt it from compliance with the D.C. APA.

Respondent does attempt to support its interpretation and implementation of "addition" and "new building" with the affidavits of District employees experienced in engineering and assessing methods and familiar with the subject property. However, an assessment based on the experience and opinions of these professionals, without more, does not meet the rulemaking requirements of the D.C. APA and consequently does not provide respondent the statutory authority it lacked when it taxed petitioners.

This Court confronted a similar difficulty of lack of clarity in the predecessor taxation provisions to §§47-029 and 47-030 (1961 ed.). In D.C. Redevelopment Land Agency v. District of Columbia, et al., 107 D.W.L.R. 949, 953 (D.C. Super. Ct. 1979), the District's assessor testified concerning the "gray area" as to what the statutory terms "erected" and

"under roof" meant in D.C. Code §§47-710 and 47-711 (1973 ed.). Although in the present case the District's employees whose affidavits respondent offered appear in agreement about the meaning of "addition" and "new building," whereas in D.C. Redevelopment Land Agency ("D.C. RLA") the assessors professed confusion over the proper definitions, and although regulations were promulgated in D.C. RLA defining the relevant terms while in the present case no definitions are spelled out by regulation, the language from that case is no less instructive:

No doubt, some of the confusion resulted from the failure to promulgate or disseminate guidelines for making such assessments for the benefit of the assessors and for the information of the public . . . Without guidelines it appears that each assessor was allowed to exercise his personal judgment on when to make assessments under Sections 47-710 and 47-711.

The D.C. RLA court granted the taxpayers' motion for summary judgment on the grounds that the second-half assessment under D.C. Code §47-711 (1973 ed.), now §47-830 (1981 ed.), was invalid as not authorized. Id.

III.

Thus the statutory authorization for supplemental assessments, both annual and second-half, requires strict compliance, and the decision to assess property as "additions" or "new buildings" must not turn upon the subjective judgment and interpretation of each individual assessor. This Court concludes there was no statutory authority for respondent's supplemental second-half assessment of an addition for Tax Year 1983.

Wherefore, it is this 13th day of May, 1985,

ORDERED that petitioners' Motion for Summary Judgment be, and hereby is, granted, that respondent's Motion for Summary Judgment be, and hereby is, denied, and it is

FURTHER ORDERED that the supplemental assessment for the second half of Tax Year 1983 made against Lot 832 in Square 254 is void, illegal and invalid and is hereby set aside; and it is

FURTHER ORDERED that respondent be, and hereby is, ordered to correct the improvements assessment on Lot 832 in Square 254 from \$15,347,257 to \$219,837, and it is

FURTHER ORDERED that respondent be, and hereby is, ordered to refund to petitioner Square 254 Limited Partnership second-half Tax Year 1983 real estate taxes on Lot 832 in Square 254 in the amount of \$161,107.02 with interest at the rate of 6% per annum from March 31, 1983, to the date of the refund.


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